

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:17-cv-00546-RJC-WCM**

BANK OF AMERICA CORPORATION,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Order

THIS MATTER is before the Court on Bank of America’s Motion for Certification of an Interlocutory Appeal. Doc. No. 87. Bank of America asks the Court to certify its summary-judgment order, Doc. No. 83, for interlocutory appeal under 28 U.S.C. § 1292(b). The government opposes the bank’s motion. Doc. No. 91.

Three elements must be satisfied for a court to certify an interlocutory appeal under § 1292(b). First, the district court’s order must “involve[] a controlling question of law.” 28 U.S.C. § 1292(b). There must be “substantial ground for difference of opinion” on the issue addressed by the order. *Id.* And an interlocutory appeal must “materially advance the ultimate termination of the litigation.” *Id.*

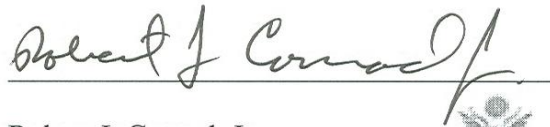
All three elements are satisfied here. The parties do not dispute that the first is met. *See* Def.’s Resp. 1–2, Doc. No. 91; Pl.’s Reply 1, Doc. No. 94. And though it is a close question, the presence of a contrary opinion from the Court of Federal Claims* shows that there is substantial ground for difference of opinion on the interest-netting issue in this case. Additionally, the

* *Wells Fargo & Co. v. United States*, 119 Fed. Cl. 27, 35 (2014), *rev’d in part* 827 F.3d 1026 (Fed. Cir. 2016).

government concedes that, if this Court’s summary-judgment order were reversed, “it would be time consuming” for the parties to rework their tax calculations. Def.’s Resp. 7, Doc. No. 91. Thus, a ruling from the Fourth Circuit—handed down before the parties begin their time-consuming calculations—would materially advance the ultimate termination of this litigation.

IT IS, THEREFORE, ORDERED that Bank of America’s Motion for Certification of an Interlocutory Appeal, Doc. No. 87, is **GRANTED**.

Signed: August 30, 2023

A handwritten signature in black ink, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

